

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAMELA A.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 2:20-cv-01427-TLF

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of Defendant's denial of her applications for disability insurance benefits ("DIB") and supplemental security income ("SSI") benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the undersigned agrees that the ALJ erred, and the ALJ's decision is reversed and remanded for further administrative proceedings.

I. ISSUES FOR REVIEW

1. Did the ALJ err at step two of the sequential evaluation?
2. Did the ALJ err in finding that Plaintiff could perform her past work?
3. Did the ALJ provide clear and convincing reasons for discounting Plaintiff's testimony?
4. Did the ALJ properly evaluate the medical opinion evidence?

1 II. BACKGROUND

2 Plaintiff filed claims for DIB and SSI on January 22, 2018, alleging in both
3 applications a disability onset date of August 7, 2017. AR 17, 217-20. Plaintiff's claims
4 were denied initially and upon reconsideration. AR 17, 142-50, 153-59, 160-66. ALJ
5 M.J. Adams held a hearing on December 4, 2019. AR 34-69. On December 20, 2019,
6 ALJ Adams issued a decision finding that Plaintiff was not disabled. AR 14-29. On July
7 21, 2020, the Social Security Appeals Council denied Plaintiff's request for review. AR
8 1-6.

9 Plaintiff seeks judicial review of ALJ Adams' December 20, 2019 decision. Dkt. 3.

10 III. STANDARD OF REVIEW

11 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
12 denial of Social Security benefits if the ALJ's findings are based on legal error or not
13 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874
14 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a
15 reasonable mind might accept as adequate to support a conclusion." *Biestek v.*
16 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

17 IV. DISCUSSION

18 In this case, the ALJ found that Plaintiff had the severe impairments of
19 degenerative disc disease, gastroesophageal reflux disease, neurocognitive disorder,
20 depressive disorder, and somatic symptom disorder. AR 19-20. The ALJ also found that
21 Plaintiff's shoulder condition, obesity, a ganglion cyst and hyperlipidemia were non-
22 severe impairments. AR 20. Relying on vocational expert ("VE") testimony, the ALJ
23 found that Plaintiff could perform her past relevant work; therefore the ALJ determined
24 at step four of the sequential evaluation that Plaintiff was not disabled. AR 28-29, 60-65.

1 A. Whether the ALJ erred at step two of the sequential evaluation

2 Plaintiff contends that the ALJ erred at step two of the sequential evaluation by
3 finding her shoulder condition and her obesity to be non-severe impairments, and not
4 considering the impact of these conditions on her residual functional capacity (“RFC”).
5 Dkt. 14, pp. 3-5.

6 At step two of the sequential evaluation, the ALJ must determine if the claimant
7 suffers from any medically determinable impairments that are “severe.” 20 C.F.R. §§
8 404.1520(a)(4)(ii), 416.920(a)(4)(ii). An impairment is not considered to be “severe” if it
9 does not “significantly limit” a claimant’s mental or physical abilities to do basic work
10 activities. 20 C.F.R. §§ 404.1520(c), 416.920(c); Social Security Ruling (“SSR”) 96-3p,
11 1996 WL 374181, at *1. Basic work activities are those “abilities and aptitudes
12 necessary to do most jobs.” 20 C.F.R. §§ 404.1522(b), 416.922(b); SSR 85-28, 1985
13 WL 56856, at *3. An impairment is not severe if the evidence establishes only a slight
14 abnormality that has “no more than a minimal effect on an individual[']s ability to work.”
15 SSR 85-28, 1985 WL 56856, at *3; *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
16 1996).

17 The ALJ’s finding that Plaintiff’s shoulder impairment had no more than a minimal
18 effect on Plaintiff’s ability to work is not supported by substantial evidence.

19 Plaintiff complained of pain and numbness in her left shoulder for several years,
20 and during physical examinations, Plaintiff exhibited numbness, tenderness and limited
21 range of motion with her left arm at the shoulder level, especially with respect to
22 overhead reaching. AR 656, 658, 662, 713.

1 Imaging of Plaintiff's left shoulder taken during the period at issue revealed
2 moderate left glenohumeral joint osteoarthritis, AC joint arthritis, probable bicep tendon
3 rupture, and evidence of chronic rotator cuff pathology, including a full thickness
4 supraspinatus tendon tear. AR 664-65, 724-25. Imaging of Plaintiff's cervical spine
5 revealed moderate to severe cervical spondylosis with multilevel bilateral osseous
6 neural foraminal stenosis. AR 668.

7 In assessing Plaintiff's RFC, the ALJ did not include any reaching limitations to
8 accommodate Plaintiff's shoulder impairment, and did not include any such limitations in
9 the hypotheticals posed to the vocational expert. When the RFC is incomplete, the
10 hypothetical question presented to the vocational expert is also incomplete, "and
11 therefore the ALJ's reliance on the vocational expert's answers [is] improper." *Hill v.*
12 *Astrue*, 698 F.3d 1153, 1162 (9th Cir. 2012).

13 The ALJ's decision to exclude reaching limitations from Plaintiff's RFC is not
14 harmless. According to the Selected Characteristics of Occupations ("SCO"), a detailed
15 companion volume to the Dictionary of Occupational Titles ("DOT") published by the US
16 Department of Labor, the jobs cited by the ALJ at step four of the sequential evaluation,
17 those of cleaner housekeeper and dietary aide, both require frequent reaching. See
18 U.S. Dep't of Labor, Selected Characteristics of Occupations Defined in the Revised
19 Dictionary of Occupational Titles, Part A (1993) at 132, 367; Appendix C.

20 Accordingly, the ALJ erred in evaluating Plaintiff's shoulder impairment at step
21 two.

22 With respect to Plaintiff's obesity, any error in the ALJ's evaluation would be
23 harmless, given that Plaintiff's residual functional capacity contains a range of work-
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1 related physical limitations, and there is no evidence that Plaintiff's obesity would
2 impose limitations beyond those already contained in the RFC. AR 22; *Valentine v.*
3 *Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009) (rejecting an invitation to
4 find that the ALJ failed to account for a claimant's injuries "in some unspecified way"
5 when the claimant did not detail what other limitations flow from the evidence of his
6 injuries, beyond the limitations already listed in the RFC).

7 B. Whether the ALJ erred in finding that Plaintiff could perform her past work

8 Plaintiff contends that the ALJ erred in finding that she could perform her past
9 work at step four of the sequential evaluation. Dkt. 14, pp. 5-12.

10 At step four in the evaluation process, the ALJ must determine whether or not a
11 claimant's impairment(s) prevents the claimant from performing past relevant work. See
12 20 C.F.R. §§ 404.1520(f), 416.920(f). If the ALJ finds that the claimant can perform past
13 relevant work, the claimant is not disabled for social security purposes and the
14 evaluation process ends. *Id.*

15 For the reasons discussed above, the ALJ's finding that Plaintiff could perform
16 her past relevant work is not supported by substantial evidence.

17 C. Other Issues

18 Plaintiff contends that the ALJ erred in evaluating the opinion evidence and by
19 not providing clear and convincing reasons for discounting her symptom testimony. Dkt.
20 14, pp. 12-18. Plaintiff will be able to present new evidence and testimony on remand,
21 and because the ALJ's reconsideration of Plaintiff's severe impairments may impact her
22 assessment of the remaining evidence, the Court declines to consider whether the ALJ
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1 erred with respect to the opinion evidence and Plaintiff's testimony. Instead, the Court
2 directs the ALJ to reweigh the evidence as necessary on remand.

3 D. Additional evidence

4 The record contains evidence submitted by Plaintiff after the ALJ issued her
5 decision. AR 7-10. The Social Security Appeals Council denied review of Plaintiff's
6 claim and opted not to exhibit this evidence, reasoning that it did not relate to the period
7 at issue. AR 2.

8 The Court must consider this additional material in determining whether the ALJ's
9 decision is supported by substantial evidence. *See Brewes v. Commissioner of Social*
10 *Security*, 682 F.3d 1157, 1160 (9th Cir. 2012) (when a claimant submits evidence for
11 the first time to the Appeals Council, which considers that evidence in denying review of
12 the ALJ's decision, the new evidence is part of the administrative which the district court
13 must consider in determining whether the Commissioner's decision is supported by
14 substantial evidence).

15 The evidence in question consists of a May 6, 2020 opinion from examining
16 psychologist Ellen Walker, Ph.D., assessing Plaintiff as having a range of moderate and
17 marked work-related mental limitations. AR 7-10. The ALJ shall evaluate this evidence
18 as appropriate on remand.

19 E. Remand for Further Proceedings

20 Plaintiff asks this Court to remand this case for an award of benefits. Dkt. 14, p.
21 12. "The decision whether to remand a case for additional evidence, or simply to award
22 benefits[,] is within the discretion of the court." *Trevizo v. Berryhill*, 871 F.3d 664, 682
23 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). If an
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1 ALJ makes an error and the record is uncertain and ambiguous, the court should
2 remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045
3 (9th Cir. 2017). Likewise, if the court concludes that additional proceedings can remedy
4 the ALJ's errors, it should remand the case for further consideration. *Revels*, 874 F.3d
5 at 668.

6 The Ninth Circuit has developed a three-step analysis for determining when to
7 remand for a direct award of benefits. Such remand is generally proper only where

8 “(1) the record has been fully developed and further administrative
9 proceedings would serve no useful purpose; (2) the ALJ has failed to
10 provide legally sufficient reasons for rejecting evidence, whether claimant
11 testimony or medical opinion; and (3) if the improperly discredited
evidence were credited as true, the ALJ would be required to find the
claimant disabled on remand.”

12 *Trevizo*, 871 F.3d at 682-83 (quoting *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th
13 Cir. 2014)). Here, the ALJ must consider additional evidence and re-evaluate Plaintiff's
14 severe impairments and her ability to perform her past work at steps two and four of the
15 sequential evaluation.

16 Therefore, there are outstanding issues which must be resolved and remand for
17 further administrative proceedings is the appropriate remedy.

CONCLUSION

Based on the foregoing discussion, the Court finds the ALJ erred when she found Plaintiff was not disabled. Defendant's decision to deny benefits is therefore REVERSED and this matter is REMANDED for further administrative proceedings. The ALJ is directed to consider the additional evidence and to re-evaluate Plaintiff's severe impairments and her ability to perform her past work on remand.

Dated this 21st day of September, 2021.

A handwritten signature in black ink, reading "Theresa L. Fricke". The signature is written in a cursive, flowing style. The first name "Theresa" is written with a large, prominent "T". The middle initial "L." is written in a smaller, simpler script. The last name "Fricke" is written with a large, prominent "F" and a long, sweeping tail that extends to the right.

Theresa L. Fricke
United States Magistrate Judge